THE HON'BLE SRI JUSTICE V.V.S. RAO

AND

THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

W.P.No.23647 of 2001

Date: 15.06.2007

Between:

Chittemshetti Venkaiah S/o Mangaiah
Aged 65 years, agriculturist, Pkalagudem village
Chandrugonda Mandal, Khammam district & another

…. Petitioners

And:

The Agent to Government (District Collector

Khammam & another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S. RAO

AND

THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

W.P.No.23647 of 2001

ORDER: (Per Hon'ble Sri Justice G.V.Seethapathy)

Aggrieved by the order dated 28.10.2001 passed by the first respondent-Agent to Government in CMA No.31 of 1997 directing ejectment of the petitioners from the land admeasuring Ac.8.01 guntas in Survey No.92/A and Survey No.103/A situated in Pokalagudem village of Chandrugonda mandal of Khammam district, the present writ petition is filed for quashing the same.

According to the petitioners, one Islavath Kotiya, was the pattedar of Ac.6.25 guntas in Survey No.92/A and Ac.1.16 guntas in Survey No.103/A by virtue of a certificate dated 26.12.1965 issued under Section 38-E of A.P. (Telangana Area) Tenancy and Agricultural Lands Act of 1950. His sons, Islavath Bicha, Islavath Lalu and Islavath Balu, inherited the said land. The petitioners claim to have purchased the land from I.Bicha, father of the respondents 3 to 5 under two unregistered sale deeds dated 1.7.1967 and 10.6.1968 and obtained possession and subsequently I. Bicha executed registered sale deeds on 15.7.1970. Notwithstanding the same, I. Bicha filed an application LTR case No.1036/1979 before the 2nd respondent in 1979 in respect of Ac.6.25 guntas in Survey No.92/A. After due enquiry, 2nd respondent dropped the proceedings by order dated 20.5.1983 observing that the transaction took place prior to declaration of *Lambadas* as tribals. Subsequently, respondents 3 to 5 filed another application, LTR case Nos.723 and 724 of 1995 before the 2nd respondent and by order dated 13.12.1995 the said proceedings were also dropped on the principle of *res judicata.* Aggrieved, by the same respondents 3 to 5 preferred an appeal CMA No.31 of 1995 before the first respondent, who passed impugned order dated 28.10.2001 setting aside the order dated 13.12.1995 of 2nd respondent in LTR case Nos.723 and 724 of 1995 on the ground that the petitioners herein who are non-tribals came into possession of the land subsequent to coming into force of the A.P. Scheduled Areas Land Transfer (Amendment) Regulation 1970 (Regulation 1/59 read with 1/70) (for short 'Regulation') on 3.2.1970 and are liable for ejectment. Impugning the said orders of the first respondent, the present writ petition is filed.

The petitioners claim to have purchased an extent of Ac.4.24 guntas in Survey No.92/A under unregistered sale deed dated 1.7.1967 and an extent of Ac.2.01 guntas in Survey No.92/A and Ac.1.16 guntas in Survey No.103/A under unregistered sale deed

dated 10.6.1968 from I.Bicha, father of respondents 3 to 5 and obtained delivery of possession on the said dates. According to them, regular sale deeds were executed on 15.7.1970, LTR case No.1036 was filed by I.Bicha, father of respondents 3 to 5 was dismissed on the ground that by the date of transaction, the *lambadas* to which community the respondents 3 to 5 belonged were not declared as tribes. It is not disputed that *lambadas* were declared as Tribes in 1977. Subsequent LTR case Nos.723 and 724 of 1995 filed by the respondents 3 to 5 were dismissed by the 2nd respondent on the principle that the earlier order dated 20.5.1983 in LTR case No.1036/79 operates as *res judicata.* LTR 1/59 as amended by 1/70 came into force on 3.2.1970. As per clause 3 of the Regulation, 'any transfer of immovable property situated in Agency tracts and in the possession of a person, whether or not such person is a member of scheduled tribe, shall be absolutely *null* and *void*, unless such transfer is made in favour a person, who is a member of a scheduled tribe'. Admittedly, the petitioners are non-tribals by the date of the subject transaction. Respondents 3 to 5 and their father were also non-tribals, as by then, *lambada* community to which they belonged was not declared as scheduled tribes. It is a case of transfer by non-tribals in favour of other non-tribals of land situated in agency tracts. Such a transfer is clearly *null* and *void* under the Regulation. The petitioners claim that the purchase of the land was made on 1.7.1967 and 10.6.1968, which was prior to coming into force of the Regulation on 3.2.1970 and therefore, the transactions are saved and the LTR has no application as held by the Full Bench of this Court in '***Gaddam Narsa Reddy Vs. Collector, Adilabad and others***[1].

The Apex Court in '***Deputy Collector & another v. S.Venkataramanaiah & another***[2]', held that 'prohibition contained in the regulation operates prospectively and does not adversely affect the completed transactions of transfer which have taken place prior to enforcement of the Regulations'. Admittedly, the alleged purchase in 1967 and 1968 was under un-registered sale deeds. Registered sale deeds were in fact executed on 15.7.1970, a copy of which was produced at the time of hearing and the same is taken as part of the record. A perusal of the same shows that the alleged purchase under unregistered sale deeds in 1967 and 1968 was nowhere referred therein and on the other hand, it is stated that the sale was effected only under and by virtue of the sale deed on 15.7.1970 and consideration was paid on that day and possession was also delivered on the same date. In view of the recitals contained in sale deeds dated

15.7.1970, the claim of the petitioners that the lands were purchased by them in 1967 and 1968 under unregistered documents cannot be accepted. As the sale transaction is shown to have taken place only under the sale deeds dated 15.7.1970 and possession was also delivered on that day and by virtue of the said document, the transaction is clearly vitiated, the same having taken place subsequent to 3.2.1970 the date on which the Regulation came into force. It cannot therefore be said that the alienations effected by the father of respondents 3 to 5 are prior to commencement of the regulation 1/1970 and hence cannot escape the rigor of the Regulation.

As can be seen from the impugned order of the first respondent, the petitioners herein have not filed any records for the crucial period 1968-69 – 1969-70 to evidence their possession even prior to coming into force of the Regulation.

Further, the dismissal of the LTR case Nos.723 and 724 of 1995 by the 2nd respondent on the principle of *res judicata* is also uncalled for, in view of the fact that the earlier LTR case No.1036 of 1979 was in respect of the part of the land i.e., Ac.6.25 guntas in Survey No.92/A but was not in respect of remaining extent of Ac.1.16 guntas in Survey No.103/A. The principle of *res jduicata* does not therefore strictly apply, inasmuch as the subject matter of the land in both cases is not identical.

The petitioners, who are non-tribals, have therefore come into possession of the land subsequent to 3.2.1970, the date on which LTR 1/59 as amended by 1/70 came into force and the provisions of the said Regulation hit the transaction. As the respondents 3 to 5 were not tribals by the date of transaction of sale that took place on 15.7.1970, the question of restoration of land in their favour does not arise. The impugned order of the first respondent setting aside the order of the 2nd respondent directing ejectment of the petitioners herein and further directing that the land be taken in to possession for assignment of the land to the eligible persons, does not therefore, call for any interference.

In the result, the writ petition is dismissed. No order as to costs.

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V.V.S.RAO, J

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G.V.SEETHAPATHY, J

Date:15.06.2007
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[1] AIR 1982 AP 1 (FB)

[2] AIR 1996 SC 224